

SENATE BILL 602

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2004 Regular Session
4lr2435
CF 4lr2317

By: **Senators Mooney, Brinkley, Hafer, Lawlah, and Munson**
Introduced and read first time: February 6, 2004
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Children - De Facto Custody**

3 FOR the purpose of authorizing a certain individual to seek custody of a child under
4 certain circumstances; authorizing a court to find that an individual who has
5 been the primary caregiver and financial support of a child for a certain period
6 of time is the child's de facto custodian; authorizing an individual to seek
7 custody of a child based on de facto custody and the best interest of the child;
8 requiring a court to make certain findings concerning the parent and a de facto
9 custodian in determining custody of a child; requiring the court to consider
10 certain factors in determining the best interest of the child; authorizing a court
11 to grant joint custody in certain proceedings; granting a de facto custodian
12 certain rights concerning the child; defining a certain term; providing for the
13 application of this Act; and generally relating to child custody proceedings.

14 BY adding to

15 Article - Family Law

16 Section 9- 501 to be under the new subtitle "Subtitle 5. Custody Granted to a De
17 Facto Custodian"

18 Annotated Code of Maryland

19 (1999 Replacement Volume and 2003 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article - Family Law**

23 **SUBTITLE 5. CUSTODY GRANTED TO A DE FACTO CUSTODIAN.**

24 9-501.

25 (A) (1) IN THIS SECTION, "DE FACTO CUSTODIAN" MEANS AN INDIVIDUAL
26 WHO HAS BEEN THE PRIMARY CARETAKER AND FINANCIAL SUPPORT OF A CHILD
27 WHO:

1 (I) IF THE CHILD IS UNDER THE AGE OF 3 YEARS, HAS RESIDED
2 WITH THE INDIVIDUAL FOR 6 MONTHS OR MORE; OR

3 (II) IF THE CHILD IS AT LEAST 3 YEARS OLD, HAS RESIDED WITH
4 THE INDIVIDUAL FOR 1 YEAR OR MORE.

5 (2) THE TIME PERIODS DESCRIBED IN PARAGRAPH (1) OF THIS
6 SUBSECTION DO NOT INCLUDE ANY PERIOD OF RESIDENCE BEGINNING AFTER A
7 PARENT SEEKING TO REGAIN CUSTODY OF THE CHILD HAS FILED A LEGAL
8 PROCEEDING.

9 (B) AN INDIVIDUAL SEEKING CUSTODY OF A CHILD UNDER THIS SECTION
10 SHALL FILE A PETITION IN EQUITY COURT THAT STATES:

11 (1) THE INDIVIDUAL HAS BEEN THE DE FACTO CUSTODIAN OF THE
12 CHILD FOR THE PERIOD OF TIME REQUIRED IN SUBSECTION (A)(1) OF THIS SECTION;
13 AND

14 (2) IT IS IN THE BEST INTEREST OF THE CHILD THAT THE PETITIONER
15 BE GRANTED CUSTODY OF THE CHILD BECAUSE:

16 (I) THE CHILD'S PARENT IS UNFIT TO HAVE CUSTODY; OR

17 (II) THERE ARE EXCEPTIONAL CIRCUMSTANCES THAT MAKE
18 CUSTODY BY THE PARENT DETRIMENTAL TO THE BEST INTEREST OF THE CHILD.

19 (C) A COURT MAY GRANT THE PETITIONER CUSTODY OF THE CHILD IF:

20 (1) BY CLEAR AND CONVINCING EVIDENCE, THE COURT FINDS THAT
21 THE PETITIONER HAS BEEN THE DE FACTO CUSTODIAN OF THE CHILD; AND

22 (2) BY A PREPONDERANCE OF THE EVIDENCE, THE COURT FINDS THAT
23 IT IS IN THE BEST INTEREST OF THE CHILD THAT THE DE FACTO CUSTODIAN IS
24 GRANTED CUSTODY OF THE CHILD BECAUSE:

25 (I) THE CHILD'S PARENT IS UNFIT TO HAVE CUSTODY; OR

26 (II) THERE ARE EXCEPTIONAL CIRCUMSTANCES THAT MAKE
27 CUSTODY BY THE PARENT DETRIMENTAL TO THE BEST INTEREST OF THE CHILD.

28 (D) THE COURT SHALL CONSIDER ALL RELEVANT FACTORS IN MAKING ITS
29 DETERMINATION UNDER SUBSECTION (C)(2) OF THIS SECTION, INCLUDING:

30 (1) THE WISHES OF THE CHILD AS TO THE CHILD'S CUSTODIAN;

31 (2) THE INTENT OF THE PARENT IN PLACING THE CHILD WITH THE DE
32 FACTO CUSTODIAN;

33 (3) THE AMOUNT OF MEANINGFUL CONTACT THE PARENT HAD WITH
34 THE CHILD DURING THE TIME THE DE FACTO CUSTODIAN HAD CUSTODY OF THE
35 CHILD;

1 (4) THE LENGTH OF TIME THE CHILD WAS AWAY FROM THE PARENT;

2 (5) THE AGE OF THE CHILD WHEN CARE WAS ASSUMED BY THE DE
3 FACTO CUSTODIAN;

4 (6) THE PERIOD OF TIME THAT ELAPSED BEFORE THE PARENT SOUGHT
5 TO RECLAIM THE CHILD;

6 (7) THE POSSIBLE EMOTIONAL EFFECT ON THE CHILD OF A CHANGE OF
7 CUSTODY;

8 (8) THE FACTS AND CIRCUMSTANCES OF THE PARENT'S ABSENCE,
9 INCLUDING WHETHER:

10 (I) THE CHILD WAS PLACED OR ALLOWED TO REMAIN IN THE
11 RESIDENCE OF THE DE FACTO CUSTODIAN BECAUSE THE PARENT SEEKING
12 CUSTODY PLACED THE CHILD WITH THE DE FACTO CUSTODIAN TO SEEK
13 EMPLOYMENT, WORK, OR ATTEND SCHOOL; OR

14 (II) THE PARENT SEEKING CUSTODY WAS PREVIOUSLY PREVENTED
15 FROM DOING SO BECAUSE OF DOMESTIC VIOLENCE;

16 (9) THE INTERACTION AND INTERRELATIONSHIP OF THE CHILD WITH
17 THE PARENT, THE CHILD'S SIBLINGS, AND ANY OTHER PERSON WHO MAY
18 SIGNIFICANTLY AFFECT THE CHILD'S BEST INTERESTS;

19 (10) THE CHILD'S ADJUSTMENT TO HOME, SCHOOL, AND COMMUNITY;

20 (11) THE STABILITY AND CERTAINTY OF THE CHILD'S FUTURE WITH THE
21 PARENT;

22 (12) THE NATURE AND STRENGTH OF THE TIES BETWEEN THE CHILD
23 AND THE DE FACTO CUSTODIAN;

24 (13) THE INTENSITY AND GENUINENESS OF THE PARENT'S DESIRE TO
25 HAVE CUSTODY OF THE CHILD;

26 (14) THE MENTAL AND PHYSICAL HEALTH OF ALL PARTIES INVOLVED;
27 AND

28 (15) INFORMATION, RECORDS, AND EVIDENCE OF DOMESTIC VIOLENCE.

29 (E) IN MAKING ITS DETERMINATION UNDER SUBSECTION (C)(2) OF THIS
30 SECTION, THE COURT MAY NOT CONSIDER THE ABANDONMENT OF THE FAMILY
31 RESIDENCE BY A PARENT IF THE PARENT WAS PHYSICALLY HARMED OR SERIOUSLY
32 THREATENED WITH PHYSICAL HARM BY THE PARENT'S SPOUSE AND THAT HARM OR
33 THREAT OF HARM CAUSED THE PARENT TO ABANDON THE FAMILY RESIDENCE.

34 (F) THE COURT MAY GRANT JOINT CUSTODY TO THE PARENT AND THE DE
35 FACTO CUSTODIAN.

1 (G) A DE FACTO CUSTODIAN:

2 (1) (I) HAS LEGAL CUSTODY OF THE CHILD; AND

3 (II) HAS THE SAME STANDING IN CUSTODY MATTERS AS A PARENT;
4 AND

5 (2) SHALL BE JOINED IN ANY ACTION RELATED TO THE CHILD AS A
6 PARTY NEEDED FOR JUST ADJUDICATION UNDER THE MARYLAND RULES.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply only
8 to cases filed on or after the effective date of this Act.

9 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2004.